IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.35721 of 2007

1. **UPENDRA TIWARY, SON OF KAMALDEO TIWARY.**
2. **SATYENDRA TIWARY, SON OF KAMALDEO TIWARY.**
3. **RANJANA TIWARY, WIFE OF SATENDRA TIWARY.**
4. **SHARMILA TIWARY, WIFE OF UPENDRA TIWARY.**
   ALL RESIDENT OF MOHALLA-BALUA TAL, P.S. TOWN, DISTRICT-EAST CHAMPARAN.
   …….PETITIONERS.

Versus

1. **THE STATE OF BIHAR.**
2. **REKHA PASWAN, SON OF BALDEO PASWAN, RESIDENT OF MOHALLA-BALUA TAL, P.S. TOWN, DISTRICT-EAST CHAMPARAN.**
   …….OPPOSITE PARTIES.

For the Petitioners : Mr. Shakti Suman Kumar, Advocate.
For the State : Mr. S. Dayal, A.P.P.
For O.P. No.2 : None.

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3. 21.11.2008. Heard the learned counsel for the petitioners and the learned A.P.P. for the State. Although O.P. No.2 on valid service of notice had appeared by filing vakalatnama yet at the time of hearing of this application none is present on his behalf.

The petitioners, through this application, seeks the quashing of order dated 15.4.2007/16.4.2007 passed by Sri O.P. Srivastava, Judicial Magistrate, First Class, East Champaran at Motihari, whereby he has taken cognizance of offences under Sections 418, 423 and 465 I.P.C. and issued processes against the petitioners.

It appears that Rekha Paswan, the complainant, impleaded herein as O.P. No.2, had filed the aforesaid complaint inter alia stating that his father, Baldeo Paswan, was a retired personnel of the

Railways and due to illness he had lost his mental balance. It was alleged that on the pretext of increasing the monthly pension petitioner nos.1 and 2 in collusion with other accused took Baldeo Paswan to Motihari Court on 26.9.2006 where his thumb impression was taken on 10-12 blank stamp papers. The two accused had assured Baldeo that the said papers would be sent to Patna for pension revision. However, as alleged on 7.10.2006 the petitioner nos.1 and 2 asked the complainant to vacate the house as they had purchased the said property whereupon the complainant enquired from the said Baldeo Paswan who expressed his ignorance about any sale deed. It is claimed that the complainant then went to Motihari Registry Office where he came to learn that the petitioner nos.1 and 2 had got two registered sale deeds executed in favour of the petitioner nos.3 and 4. It is further alleged that the petitioners in collusion with others had fraudulently got executed two registered sale deeds without payment of consideration amount.

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It has been submitted on behalf of the petitioners that it is apparent from a bare perusal of the complaint petition that the present complaint was purely simple in nature and no part of transaction would fall within the ambit of criminal prosecution.

It is not in dispute that cognizance had been taken after holding an enquiry under Section 202 Cr.P.C. As observed by the Hon'ble Apex Court in the case of Chandradeo Vs. Prokash Chandra (AIR 1963 SC 1430), since the object of an inquiry under Section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint

are intrinsically true the Magistrate acting under Section 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion he is entitled to consider the evidence taken by him or recorded by him in an inquiry under Section 202 Cr.P.C. and he is not entitled to rely upon any material besides this.

In the instant case, the cognizance had been taken on the basis of material that has come in course of the evidence recorded at the inquiry under Section 202 Cr.P.C. Any other matter beyond that will obviously be beyond the scope and ambit of the inquiry under Section 202 Cr.P.C. The points in issue as have been raised by the learned counsel for the petitioners happen to be their defence and to be agitated at the appropriate time before the appropriate forum for which liberty is granted to the petitioners.

Accordingly, with the aforesaid liberty, as stated above, granted to the petitioners, this application is dismissed.

(Abhijit Sinha,J)

P.S.

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